

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**FREEDOM FROM RELIGION
FOUNDATION, INC.**

Plaintiff,

-VS-

GOVERNOR GREG ABBOTT, in his official and individual capacities, and ROD WELSH, Executive Director of the Texas State Preservation Board, in his official capacity,

Defendants.

§ § § § § § § § § § § § § §

CAUSE NO. 1-16: CV-00233

**DECLARATION OF SAM GROVER IN SUPPORT OF
PLAINTIFF'S MOTION FOR ATTORNEY'S FEES**

I, Sam Grover, do hereby declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury,
that the following is true and correct and based on my personal knowledge:

1. I am Associate Counsel for the Plaintiff, Freedom From Religion Foundation, Inc. (“FFRF”) and an attorney of record for the Plaintiff in this matter.
2. The vast majority of my professional expertise, experience as an attorney, and work product has involved violations of the First Amendment to the U.S. Constitution, including Establishment Clause, free exercise, and free speech issues.
3. I graduated from Boston University School of Law in May, 2012. During my time at Boston University I was an Articles Editor for the *American Journal of Law and Medicine* and authored a note published in that journal analyzing the constitutional implications of religious exemptions to the health insurance mandate in the Patient Protection and Affordable Care Act.
4. I was admitted to the State Bar of Massachusetts in November, 2012 (now in retired status) and have been an active member of the State Bar of Wisconsin since April 10, 2014. I am

EXHIBIT C

admitted to practice in the Western District of Wisconsin (December 12, 2014), the Western District of Texas (March 7, 2016), the Fifth Circuit Court of Appeals (October 7, 2016), and the Seventh Circuit Courts of Appeals (September 1, 2017). I have, at all times, been a member in good standing in each bar and court to which I have been admitted.

5. I have been employed by the Freedom From Religion Foundation since October, 2013, during which time my duties have primarily included analyzing and processing complaints regarding violations of the First Amendment. I also worked as a legal intern for FFRF in the summer of 2010, during which time I drafted letters of complaint and educational letters to government entities regarding the constitutional separation of religion and government.

6. In my capacity as an attorney for FFRF I have litigated First Amendment cases in federal district courts across the country, including Georgia, Indiana, Wisconsin, the District of Columbia, and Texas, including two cases in the Western District of Texas. In total I have been FFRF's lead attorney on seven cases, including this matter, as well as:

- *FFRF v. Judge Wayne Mack*, No. 4:17-881 (S.D. Tex. filed Mar. 21, 2017) (bringing Establishment Clause challenge to a justice of the peace's practice of opening each court session with clergy-led prayer);
- *FFRF v. Concord Cmty. Schs.*, 240 F. Supp. 3d 914 (N.D. Ind. 2017), *aff'd*, 885 F.3d 1038 (7th Cir. Mar. 21, 2018) (ruling that school's 45-year practice of including a live nativity scene with bible recitation at each winter concert violated the Establishment Clause and approving of new practice);
- *FFRF v. Brewster Cty.*, No. 4:16-014 (W.D. Tex. June 13, 2016) (issuing consent decree and order to remove cross decals from county law enforcement vehicles and concurrently dismissing Establishment Clause challenge to the decals);
- *FFRF v. Franklin Cty.*, No. 1:15-484 (S.D. Ind. Dec. 17, 2015) (granting stipulation of dismissal to First Amendment challenge to county's policy prohibiting nonresidents from participating in county's display forum after county revised its policy to allow plaintiffs' displays);
- *FFRF v. Emanuel Cty. Sch. Sys.*, No. 6:15-013 (S.D. Ga. Oct. 8, 2015) (granting stipulation of dismissal to First Amendment challenge to school employee conduct promoting prayer and other religious activities after settlement agreement);
- *FFRF v. Franklin Cty.*, 133 F. Supp. 3d 1154 (S.D. Ind. 2015) (dismissing Establishment Clause challenge to county's practice of displaying nativity scene on

courthouse lawn each December after plaintiffs' voluntary withdrawal of request for injunctive relief, given county's new ordinance to allow additional displays).

7. I have coordinated, advised, and provided research and drafting support on numerous additional First Amendment cases on behalf of FFRF, most notably:

- *FFRF v. Trump*, No. 3:17-330 (W.D. Wis. Dec. 14, 2017) (accepting voluntary dismissal of Establishment Clause, equal protection, and Take Care Clause challenge to President Trump's May 4, 2017 Executive Order on IRS enforcement of the Johnson Amendment, after Justice Department stated the EO had no effect);
- *Barker v. Conroy*, No. 1:16-850 (D.D.C. Oct. 11, 2017), *appeal docketed*, No. 17-5278 (D.C. Cir. Dec. 20, 2017) (on appeal after ruling that the chaplain for the House of Representatives did not violate the Establishment Clause, equal protection, Religious Freedom Restoration Act, or Religious Test Clause by refusing to allow an atheist to deliver the House's opening prayer as a guest chaplain);
- *FFRF v. Office of Comm'r of Ins.*, No. 14-3429 (Dane Cty. Cir. Ct. Nov. 24, 2015) (awarding attorney fees and statutory damages to plaintiffs after challenge brought under state open records law);
- *FFRF v. Lew*, 773 F.3d 815 (7th Cir. 2014) (vacating for lack of standing Establishment Clause and equal protection challenge to federal income tax housing allowance exemption for "ministers of the gospel").

8. In addition to litigation, I have also co-authored *amicus curiae* briefs to the Fifth Circuit Court of Appeals and Ninth Circuit Court of Appeals, as well as consulted on *amicus* briefs to the Eleventh Circuit Court of Appeals, Colorado Court of Appeals, and Wisconsin's Dane County Circuit Court. All of these briefs concerned Establishment Clause and other First Amendment issues.

9. In addition to litigation work, I also regularly write legal demand and educational letters to various state and federal authorities and negotiate with those entities regarding Establishment Clause and other constitutional violations. Since 2014, through this non-litigation legal advocacy I have attained approximately 250 known victories for FFRF complainants.

10. I have presented two continuing legal education (CLE) programs on First Amendment religion clause issues. In May, 2018 I presented on the radical redefinition of

“religious freedom” at a Dallas Bar Association event. I also participated in a program entitled “Chipping Away the Wall of Separation – A Survey of Recent Supreme Court Cases Regarding the Establishment Clause” at a Legal Association for Women event in Madison, Wisconsin in August, 2014.

11. I have also given numerous educational lectures on First Amendment issues around the country, including:

- *FFRF: Fighting the Good Fight for Separation of Church and State*, Unitarian Universalist Society of Iowa City, Iowa City, IA (Apr. 2018);
- *The Future of Church/State Separation: A Legal Perspective*, Winchester Academy, Waupaca, WI (Oct. 2017);
- *Protect the First Amendment – It Protects You*, Reason Rally, Washington D.C. (June 2016);
- *Secular Student Activism – Rights on Campus*, Southwest Secular Student Conference (SwssCon), Claremont, CA (Sept. 2015);
- *Secular Students – Rights on Campus*, Secular Student Alliance (SSA) Annual Conference, Ohio State University in Columbus, OH (July 2015);
- Presentation to the Southeast Wisconsin FreeThinkers, Cudahy, WI (June 2015);
- Debate on Religion in the Public Schools, Rhinelander High School, Rhinelander, WI (Oct. 2014).

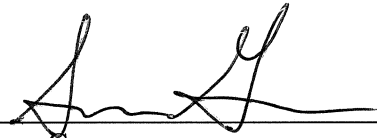
Attorney’s Fees

12. An itemization of the hours I have worked on this case and the work performed is attached to this declaration as Exhibit A. It is a true and correct summary and cumulative total of the hours I have spent working on this case, which total 145 hours and 50 minutes. As noted though, it does not include entries for time I spent coordinating or applying for FFRF’s 2015 display, regular communications with my client (FFRF), communicating with the media about the case, or recording my hours in the time log. Plaintiff is not seeking compensation for those excluded activities, or for any other activity where “excluded” has been listed under the column meant for recording the hours worked.

13. Due to my experience and expertise in First Amendment law, and Establishment Clause and free speech law specifically, plus my understanding of the hourly rates typically charged by attorneys with similar experience and expertise in the Austin area, I believe that \$350 per hour is a reasonable hourly rate for my work in this case.

14. The hours I dedicated to this matter were reasonable and inextricably intertwined with FFRF's free speech claims in that they arose from the same facts and were based on related legal theories.

Executed on this 3 day of July, 2018.



Sam Grover

Exhibit A -

Attorney Grover Time Log

Date	Description	Duration	Total time:	145:50:00
1/5/16	collected communications to State Preservation Board	0:20	Rate:	\$350/hour
1/6/16	initial planning meeting with Atty Bolton & Atty Elliott	1:25	Total fees:	\$51,041.55
1/7/16	research for complaint on forums, free speech	2:30		
1/11/16	reviewed attorney admission process for W.D. Tex	excluded		
1/12/16	began drafting complaint	1:00		
1/13/16	continued drafting complaint	3:35		
1/13/16	gathered photos of SPB removing FFRF's display	0:15		
1/15/16	finished drafting complaint first draft	1:25		
1/22/16	finished collecting info for W.D. Tex applications	excluded		
2/2/16	discussed complaint strategy	0:35		
2/2/16	researched sovereign immunity	1:25		
2/5/16	reviewed Atty Bolton's draft complaint	1:40	no entries included for: time spent on 2015 display application and coordination, regular communications with client (FFRF), media communication, time spent recording the entries in this time log.	
2/8/16	edited Atty Bolton's draft complaint	0:45		
2/9/16	further edits to draft complaint and research into 11th Amendment	1:15		
2/17/16	consolidated edits to draft complaint	1:05		
3/3/16	sworn in to Western District of Texas	excluded		
4/4/16	reviewed defendant's motion to dismiss (MTD)	2:10		
4/4/16	researched 12(b)(6) standard of review	0:20		
4/4/16	researched 12(d) applicability	0:20		
4/13/16	meeting with Atty Bolton & Atty Elliott on response to MTD	1:00		
4/20/16	researched qualified immunity section of reply to MTD	4:05		
4/21/16	began drafting qualified immunity section of reply to MTD	2:35		
4/22/17	finished drafting qualified immunity section of reply to MTD	4:20		
4/25/16	call with Atty Bolton about reply to MTD vs amended complaint	0:20		
4/26/16	edited amended complaint	1:15		
4/27/16	edited amended complaint	0:45		
5/16/16	reviewed new MTD	0:30		
5/16/16	edited response: added argument, changed citations	2:40		
6/23/16	discussion over proposed settlement terms with Atty Elliott and FFRF Co-President Annie Laurie Gaylor	0:50		
7/1/16	review of plaintiffs' requests for production	0:15		
7/12/16	reviewed answers to complaint	0:30		
7/12/16	reviewed requests for production with Atty Elliott and FFRF Co-President Annie Laurie Gaylor	0:20		
7/12/16	began collecting responsive documents (emails with SPB)	0:25		
7/13/16	meeting with Atty Bolton & Atty Elliott to discuss need for depositions and interrogatories	0:35		
7/19/16	wrote 2016 display application and sponsorship request form (0:40)	excluded		
7/19/16	reviewed defendant's initial disclosures	0:20		
7/21/16	continued collecting responsive documents to RFP (internal emails, emails with local Texas contact Arturo)	1:15		
8/2/16	reviewed defendants' provided documents for interesting approved exhibits, discussion of the nativity scene; discussed results with Atty Elliott	1:55		
8/3/16	continued collecting responsive documents to RFP (Jacob Fortin and Temple displays emails, Freethought Today articles, Twitter, FFRF News emails, Facebook, Freethought Radio)	5:10		
8/3/16	sorted, checked content, and scanned all collected documents for RFP	1:45		
8/4/16	created privilege log	0:15		
8/8/16	meeting Atty Bolton & Atty Elliott about need for deposition, SJ motion strategy	0:15		
8/17/16	edited proposed stipulated facts	1:30		
8/17/16	edited declaration of Sam Grover	1:25		

8/17/16	finalized proposed stipulation of facts after Atty Elliott edits	0:10			
8/18/16	edited MSJ	3:15			
8/19/16	final edits and signing of my declaration, review of exhibits	1:40			
8/22/16	read defendants' MSJ and exhibits, marked areas for rebuttal	2:45			
8/24/16	began drafting reply to D's MSJ	2:25			
8/25/16	continued drafting reply to D's MSJ, researched vagueness and overbreadth doctrines	3:15			
9/1/16	continued drafting reply to D's MSJ, researched limited public forums	3:50			
9/2/16	continued drafting reply to D's MSJ, argument on not a content restriction	2:50			
9/2/16	arguments on not government speech and unbridled discretion	3:45			
9/6/16	tweaked the reply to D's MSJ section on government speech	0:15			
9/14/16	edited opening to MSJ based on Atty Bolton's suggestions	0:35			
9/19/16	comments/edits to final draft of reply to D's MSJ	2:35			
1/13/17	meeting with Atty Bolton & Atty Elliott to discuss injunction options	0:20			
1/13/17	meeting with FFRF Co-President Annie Laurie Gaylor and Atty Elliott to discuss potential injunction	0:25			
4/13/17	reviewed MSJ decision and discovery responses in preparation for crafting deposition questions	0:30			
4/14/17	review of discovery for meeting	0:45			
4/14/17	meeting with Atty Bolton & Atty Elliott on discovery & deposition strategy	0:25			
4/17/17	added to Robert Davis deposition questions	1:45			
4/27/17	preliminary review of D's requests for admission, interrogatories, and RFPs	2:00			
4/27/17	drafted responses to each of D's RFAs	2:40			
4/28/17	read Abbott's motion for protective order and D's response	0:40			
5/1/17	analyzed D's motion for judgment and qualified immunity on the pleadings	1:10			
5/10/17	research into proper scope for a motion on the pleadings and qualified immunity defense	0:45			
5/18/17	gathered RFP documents for requests #2 and #3	1:15			
5/18/17	gathered RFP documents for all other requests	2:00			
5/19/17	created organization structure for RFP documents gathered by others	1:30			
5/19/17	meeting on D's discovery request	1:20			
5/22/17	redacted responsive documents to D's RFP	1:05			
5/23/17	summarized display application for interrogatory #14	0:35			
5/24/17	redacted responsive documents for RFP #7 and logged entries for interrogatory #14, plus printed responsive docs for RFP #1	5:05			
5/25/17	collected documents for RFP #7 (searched additional sources) and wrote summaries for entries for interrogatory #14	4:35			
5/25/17	meeting on deposition testimony with Atty Bolton	1:00			
5/25/17	edited draft responses to RFPs and interrogatories	0:40			
5/26/17	sat for FFRF Co-President Annie Laurie Gaylor deposition	excluded			
5/30/17	reviewed D's responses to P's 2nd RFP and 1st interrogatories	0:50			
6/19/17	reviewed SCOTUS decision in Mark v. Tam	0:35			
6/29/17	wrote notes on John Sneed deposition testimony	1:50			
7/12/17	reviewed areas of examination for Governor's Office deposition	0:15			
7/13/17	reviewed Dkt. 64 and sent thoughts to Atty Bolton	1:20			
7/19/17	meeting with Atty Bolton & Atty Elliott on 30(b)(6) deposition and dispositive motions due date	1:15			
7/28/17	reviewed P's 2d MSJ	0:30			
7/28/17	reviewed D's 2d MSJ	1:45			
7/28/17	meeting with Atty Bolton & Atty Elliott about resp to D's 2d MSJ	0:30			
8/7/17	began drafting Grover #2 declaration	0:30			
8/8/17	continued drafting Grover #2 declaration, with fact checking	3:40			
8/11/17	modified Grover #2 declaration and prepared exhibits	1:50			
10/13/17	reviewed court ruling on SJ motions and emailed with client	0:45			
10/16/17	meeting with FFRF Co-President Dan Barker & Atty Elliott on decision and strategy	0:15			

11/2/17	discussion of options after appeal filed with Atty Bolton & Atty Elliott	0:30			
	review of proposed Motion for Entry of Judgment & 2 conversations with				
2/5/18	Atty AElliott on proposed language	0:50			
2/6/17	began draft declaration in support of motion for attorney's fees	0:15			
2/7/18	review of new draft of proposed Motion for Entry of Judgment	0:15			
2/7/18	continued drafting declaration in support of motion for attorney's fees	3:55			
2/8/17	finalized declaration in support of motion for attorney's fees	2:10			
4/25/18	email regarding joint resolution of issues	0:10			
4/27/18	met with Atty Bolton to discuss options on voluntary dismissal of claims	0:20			
5/1/18	email to Atty Bolton and discussion with Atty Elliott on resolving outstanding claims	0:15			
5/4/18	discussion with Atty Elliott on joint stipulation and entry of final judgment, email to Atty Bolton	0:15			
5/30/18	began drafting Second Motion for Entry of Judgment	0:25			
5/31/18	research into requirements for entry of final judgment and continued drafting of Second Motion for Entry of Judgment	1:55			
6/8/18	continued drafting second motion for entry of judgment	0:45			
6/15/18	research into remedies; finalized second motion for entry of judgment	2:25			
6/15/18	research into remedies; drafted proposed final judgment order	2:00			
6/20/18	read final judgment	0:05			
6/26/18	updates to atty fees declaration	1:20			